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EXAMINER

JAGAN, MIRELLYS

ART UNIT

PAPER NUMBER

2859

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15

Please find below and/or attached an Office communication concerning this application or proceeding.

NP

Office Action Summary	Application No.	Applicant(s)
	09/505,119	REVNELL, JOSEPH D.
	Examiner	Art Unit
	Mirells Jagan	2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 November 2002.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 2-18 and 25-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 26-29 and 68 is/are allowed.
- 6) Claim(s) 2-18,25,30-67 and 69 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on 2/13/02 & 7/12/02 is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 17, 18, and 40-53 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted step is the step of connecting the tape measure to the stationary member. As claimed, there is no structural relationship between the tape measure and the stationary member. In this case, the stationary member can be considered to be a notebook or a piece of paper on a table, wherein a person takes a tape measure and, while holding the tape measure, measures a window or a wall, and then notes the measurement on the notebook or piece of paper. The specification discloses that the tape measure is connected to the stationary member. Claims 18 and 40-53 are rejected for being dependent on rejected base claim 17.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 25, 54-56, 58, 59, 61, 62, 64, and 69 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,344,231 to Martinez.

Martinez discloses a layout device having:

a circular stationary member (12) with non-slip feet and a flat surface adapted to be marked on and a sheet of paper placed thereon, and
an angle and distance device (22, 34, 36) fixedly and rotatably attached to the stationary member, the angle and distance device including a longitudinally and laterally rigid extendable tape (34) that can be extended from a central point, an edge that facilitates marking on the stationary member, a tape measure extender (handle on 36) for mechanically extending the tape, and a carrier (36) that is pivotally coupled to the stationary member (by segment 22) and adapted to hold the tape measure.

Martinez forms a template of an area by providing the stationary member, fixedly and rotatably attaching the angle and distance device to the stationary member, recording direction information, which signify the angular location of the features of the area relative to the pivot point of the angle and distance device on the stationary member, and recording distance information, which signify the distance from the feature of the area to the pivot point of the angle and distance device on the stationary member, as the angle and distance device is rotated and the tape is extended and retracted with the tape extender to the features to thereby form an exact outline of the surface area that is being laid out. The stationary member remains stationary during at least two distance and angle information recordings. (see column 3, lines 3 and 6-8, column 4, lines 22-24).

Therefore, in utilizing the device disclosed by Martinez to measure and lay out an area, the method steps of claims 25, 54-56, 58, 59, 61, 62, 64, and 69 would inherently be followed.

Claim Rejections - 35 USC § 103

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 60 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martinez.

Martinez discloses a method of measuring and laying out an area having all of the limitations of claims 60 and 63, as stated above in paragraph 4, except for the step of writing directly onto the stationary member, and the stationary member being semi-circular.

Referring to claim 60, eliminating the paper disclosed by Martinez, absent any criticality, is only considered to be an obvious modification of the device disclosed by Martinez that a person having ordinary skill in the art at the time the invention was made would be able to provide using routine experimentation since the courts have held that there is no invention in eliminating an element and its function if the remaining elements perform the same functions as before. See In re Karlson, 136 USPQ 184 (CCPA 1963). In this case, when the paper on the stationary member is eliminated, all of the remaining elements will still perform the same function of providing a layout of a surface area.

Referring to claim 63, the shape of the stationary member, i.e., semi-circular shaped, absent any criticality, is only considered to be an obvious modification of the shape of the stationary member disclosed by Martinez as the courts have held that a change in shape or

configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention. See *In re Dailey*, 149 USPQ 47 (CCPA 1976).

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7/ Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martinez in view of French Patent 2614982 to Mercier.

Martinez discloses a method of measuring and laying out an area having all of the limitations of claim 66, as stated above in paragraph 4, [✓] except for the angle and distance device having a digital readout for displaying the distance that the tape is extended.

Mercier discloses a tape measure having a casing with a digital readout (digital display 10) for automatically displaying the distance that the tape is extended. The digital readout allows an individual to quickly and accurately determine the distance that the tape measure is extended (see figure 1 and abstract).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the angle and distance device disclosed by Martinez by adding a digital readout that displays the distance that the tape is extended, as disclosed by Mercier, in order to allow an individual to quickly and accurately determine the distance that the tape is extended when taking measurements for a layout.

Therefore, in utilizing the device disclosed by Martinez and Mercier to measure and layout an area, the method steps of claim 66 would inherently be followed.

8. Claims 17, 40, 42-49, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martinez.

Martinez discloses a layout device having:

a circular stationary member (board 12) with non-slip feet,
a tape measure (34) connected to a carrier (36) and located within the carrier, wherein the carrier is rotatably attached to the stationary member (by segment 22),
a tape measure extender (handle on 36) for mechanically extending the tape measure, and
a sheet of paper (44) placed on the stationary member.

Martinez teaches that the device is used for measuring and laying out a template of an area by providing the stationary member, placing a sheet of paper on the stationary member, connecting the tape measure to the carrier and rotatably attaching the carrier to the stationary member, extending the tape measure using the tape measure extender to a critical feature of the area being measured and laid out, recording direction information of the critical feature on the paper signifying the angular location of the critical feature relative to the pivot point on the stationary member, and recording distance information of the critical feature on the paper signifying the distance from the pivot point on the stationary member to the critical feature to thereby form an exact outline of the surface area that is being laid out (see column 3, lines 3 and 6-8, column 4, lines 22-24).

Martinez does not disclose the method of measuring and laying out an area having the step of writing directly onto the stationary member, the layout device being used to measure the layout of a room, and the stationary member being semi-circular.

Referring to claim 17, Martinez teaches that his layout device can be used to layout a surface area, i.e., any surface area. He discloses only as an example that such an area can be a golf green, among other areas. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the Martinez device to layout the surface area within a room since a room has a surface area and Martinez discloses that his device can be used to layout any surface area.

Referring to claim 45, eliminating the paper disclosed by Martinez, absent any criticality, is only considered to be an obvious modification of the device disclosed by Martinez that a person having ordinary skill in the art at the time the invention was made would be able to provide using routine experimentation since the courts have held that there is no invention in eliminating an element and its function if the remaining elements perform the same functions as before. See In re Karlson, 136 USPQ 184 (CCPA 1963). In this case, when the paper on the stationary member is eliminated, all of the remaining elements will still perform the same function of providing a layout of a surface area.

Referring to claim 48, the shape of the stationary member, i.e., semi-circular shaped, absent any criticality, is only considered to be an obvious modification of the shape of the stationary member disclosed by Martinez as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention. See In re Dailey, 149 USPQ 47 (CCPA 1976).

Therefore, in utilizing the device disclosed by Martinez above to measure and lay out a surface area of a room, the method steps of claims 17, 40, 42-49, and 53 would inherently be followed.

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9. Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martinez in view of Mercier.

Martinez discloses a method of measuring and laying out an area having all of the limitations of claim 51, as stated above in paragraph 8, except for the device having a digital readout for displaying the distance that the tape measure is extended.

Mercier discloses a tape measure having a digital readout (digital display 10) for automatically displaying the distance that the tape measure is extended. The digital readout allows an individual to quickly and accurately determine the distance that the tape measure is extended (see figure 1 and abstract).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Martinez by adding a digital readout displaying the distance that the tape measure is extended, as disclosed by Mercier, in order to allow an individual to quickly and accurately determine the distance that the tape measure is extended when taking measurements for a layout.

Therefore, in utilizing the device disclosed by Martinez and Mercier to measure and lay out a surface area of a room, the method steps of claim 51 would inherently be followed.

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10. Claims 2-4, 7, 9, 11, 12, 14, 25, 54-56, 58, 60, 62, 63, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,269,015 to Barker in view of U.S. Patent 2,349,670 to Moxey.

Barker discloses a layout device comprising:

a stationary member with a flat surface adapted to be marked on,
an angle and distance device rotatably attached to the stationary member, the angle and distance device including a carrier (10) pivotally coupled to the stationary member and adapted to hold a tape measure which incorporates a longitudinally and laterally rigid extendable tape (20) that can be extended from a central point, an edge that can facilitate marking on the stationary member to form a template as the angle and distance device is rotated and the tape is extended and retracted to critical features of an area, and
a holder (23) attached to an end of the tape and configured for holding a writing utensil (25),

wherein a template is formed by writing markings (40) directly onto the stationary member (see figure 3) as the angle and distance device is rotated and the tape is extended and retracted to critical features of an area.

Barker does not disclose the angle and distance device being fixedly and rotatably attached to the stationary member, the stationary member having a circular or semi-circular configuration, or the member being a board.

Moxey discloses a layout device having an angle and distance device that is fixedly and rotatably attached to a stationary member when the device is being used for a layout. The device utilizes means (33) to fasten the device to the stationary member. The fastening means is

beneficial since it allows more accurate layouts to be formed by preventing the device from sliding or moving away from the desired pivot axis as the device is rotated about the pivot axis.

Referring to claims 9, 12, and 25, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the angle and distance device disclosed by Barker by adding means for fixedly and rotatably attaching the device to the stationary member, as disclosed by Moxey, in order to fasten the device to the stationary member and thereby obtain a more accurate layout.

Referring to claims 11, 12, 62, and 63, the shape of the stationary member, i.e., circular or semi-circular shaped, respectively, absent any criticality, is only considered to be an obvious modification of the shape of the stationary member disclosed by Barker as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention, i.e., to provide a layout on the surface of the member. See In re Dailey, 149 USPQ 47 (CCPA 1976).

Referring to claims 7 and 58, the particular type of material used to make the stationary member, i.e., a board, absent any criticality, is only considered to be the use of a “preferred” or “optimum” material out of a plurality of well known materials that a person of ordinary skill in the art at the time the invention was made would have been able to provide using routine experimentation based on the intended use of applicant’s apparatus, i.e., suitability for the intended use of applicant’s apparatus. See In re Leshin, 125 USPQ 416 (CCPA 1960) where the

court stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious.

Therefore, in utilizing the device disclosed by Barker and Moxey to measure and lay out an area, the method steps of claims 25, 54-56, 58, 60, 62, 63, and 65 would inherently be followed.

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11. Claims 5 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker and Moxey, as applied to claims 2-4, 7, 9, 11, 12, 14, 25, 54-56, 58, 60, 62, 63, and 65 above, and further in view of U.S. Patent 4,835,870 to Rauch et al [hereinafter Rauch].

Barker and Moxey disclose a device having all of the limitations of claims 5 and 57, as stated above in paragraph 10, except for the carrier having a front leg with straight edges and guides for the tape.

Rauch discloses a device for measuring distances having a carrier with a front leg (front end area 11c) having guides (guides 20) for a tape (tape 19). The front leg and guides are beneficial since they protect the tape from being damaged as it is retracted back into a tape measure (see figure 1, column 2, lines 10-13, and column 3, lines 33-39).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker and Moxey by adding a front leg with guides to the carrier, as disclosed by Rauch, in order to protect the tape as it is being retracted into the tape measure.

Therefore, in utilizing the device disclosed by Barker, Moxey, and Rauch to measure and lay out an area, the method steps of claim 57 would inherently be followed.

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1/2. Claims 6, 13, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker and Moxey, as applied to claims 2-4, 7, 9, 11, 12, 14, 25, 54-56, 58, 60, 62, 63, and 65 above, and further in view of U.S. Patent 5,768,797 to Trevino.

Barker and Moxey disclose a device having all of the limitations of claims 6, 13, and 64, as stated above in paragraph 10, except for the carrier having a housing within which is located the tape measure, and the angle and distance device having a tape measure extender for mechanically extending the tape.

Trevino discloses a tape measure having a housing (12) with means for automatically extending and retracting a tape (16). The device allows a single person to extend and retract a tape while staying in a single location, thereby facilitating the taking of measurements by a single person (see figure 1A, 2, and 3, column 1, lines 29-46, and column 3, lines 20-46).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker and Moxey by adding tape extending means to the tape measure, as disclosed by Trevino, in order to allow a single person to extend and retract the tape while staying in a single central location when taking measurements for a layout.

Therefore, in utilizing the device disclosed by Barker, Moxey, and Trevino to measure and lay out an area, the method steps of claim 64 would inherently be followed.

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13. Claims 8, 10, 59, and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker and Moxey, as applied to claims 2-4, 7, 9, 11, 12, 14, 25, 54-56, 58, 60, 62, 63, and 65 above, and further in view of Martinez.

Barker and Moxey disclose a device having all of the limitations of claims 8, 10, 59, and 61, as stated above in paragraph 10, except for the stationary member having non-slip feet and the stationary member having paper placed on its surface for marking thereon.

Martinez discloses a device for mapping areas having a stationary member (12) with non-slip feet (18) for securing the member on a surface when extending a measuring tape (38) that is attached to the member, and a layout formed by drawing onto paper placed on the stationary member in order to remove the layout from the stationary member after the layout is drawn. The use of a paper allows an individual to utilize the stationary member for drawing many different layouts since the markings are not placed directly on the stationary member (see figure 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker and Moxey by adding non-slip feet and paper to the stationary member, as disclosed by Martinez, in order to prevent the stationary member from moving when the tape is being retracted or extended from the tape measure and allow the stationary member to be utilized for more than a single layout.

Therefore, in utilizing the device disclosed by Barker, Moxey, and Martinez to measure and lay out an area, the method steps of claims 59 and 61 would inherently be followed.

Art Unit: 2859

14. Claims 15 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker and Moxey, as applied to claims 2-4, 7, 9, 11, 12, 14, 25, 54-56, 58, 60, 62, 63, and 65 above, and further in view of Mercier.

Barker and Moxey disclose a device having all of the limitations of claims 15 and 66, as stated above in paragraph 10, except for the device having a digital readout for displaying the distance the tape is extended.

Mercier discloses a tape measure having a digital readout (10) for automatically displaying the distance that the tape is extended. The digital readout allows an individual to quickly and accurately determine the distance that the tape measure is extended (see figure 1 and abstract).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker and Moxey by adding a digital readout displaying the distance that the tape is extended, as disclosed by Mercier, in order to allow an individual to quickly and accurately determine the distance that the tape measure is extended when taking measurements for a layout.

Therefore, in utilizing the device disclosed by Barker, Moxey, and Mercier to layout an area, the method steps of claim 66 would inherently be followed.

15. Claim 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barker and Moxey, as applied to claims 2-4, 7, 9, 11, 12, 14, 25, 54-56, 58, 60, 62, 63, and 65 above, and further in view of Arcand.

Barker and Moxey disclose a device having all of the limitations of claim 67, as stated above in paragraph 10, except for the tape having a pivotal pointer at a distal end.

Arcand discloses a tape measure having a pivotal pointer (100) at a distal end of the tape for securely attaching and aligning the distal end onto a surface thus maintaining the tape in an extended position and allowing a single person to take measurements (see figure 3 and column 3, lines 55-60)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker and Moxey by adding a pivotal pointer at a distal end of the tape, as disclosed by Arcand, in order to allow a single person to take measurements by securely attaching and aligning the distal end onto a surface and thus maintain the tape in an extended position when marking the stationary member.

Therefore, in utilizing the device disclosed by Barker, Moxey, and Arcand to measure and lay out an area, the method steps of claim 67 would inherently be followed.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of Moxey and U.S. Patent 6,115,931 to Arcand.

Barker discloses a layout device comprising:
a stationary member with a flat surface adapted to be marked on,
an angle and distance device rotatably attached to the stationary member and including a longitudinally and laterally rigid extensible tape that can be extended from a central point and an edge that facilitates reliably marking on the stationary member to form a template as the angle and distance device is rotated and the tape is extended and retracted to critical features of an area.

Barker does not disclose the angle and distance device being fixedly and rotatably attached to the stationary member, and the tape having a pivotal pointer at a distal end.

Moxey discloses a layout device having an angle and distance device that is fixedly and rotatably attached to a stationary member when the device is being used for a layout. The device utilizes means (33) to fasten the device to the stationary member. The fastening means is beneficial since it allows more accurate layouts to be formed by preventing the device from sliding or moving away from the desired pivot axis as the device is rotated about the pivot axis.

Arcand discloses a tape measure having a pivotal pointer (100) at a distal end of the tape for securely attaching the distal end onto a surface thus maintaining the tape in an extended position and allowing a single person to take measurements (see figure 3 and column 3, lines 55-60).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the angle and distance device disclosed by Barker by adding means for fixedly and rotatably attaching the device to the stationary member, as disclosed by Moxey, in order to fasten the device to the stationary member and thereby obtain a more accurate layout. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding a pivotal pointer at the distal end of the tape, as disclosed by Arcand, in order to allow a single person to take measurements by securely attaching the distal end onto a surface and thus securing the tape in an extended position when marking the stationary member.

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17. Claims 30, 32, 34, and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of Moxey and Trevino.

Barker discloses a layout device comprising:

a stationary member with a flat surface adapted to be marked on,
a carrier rotatably attached to the stationary member,
an extensible tape connected to the carrier and configured to be extended from the carrier, the tape including a straight edge that can facilitate marking directly onto the stationary member to form a template as the carrier is rotated and the tape is extended and retracted to critical features of an area, and
a holder (23) attached to an end of the tape for holding a writing utensil (23).

Barker does not disclose the carrier being fixedly and rotatably attached to the stationary member, the carrier having a tape extender for mechanically extending the tape, the stationary member having a circular or semi-circular configuration, and the stationary member being a board.

Moxey discloses a layout device having an angle and distance device that is fixedly and rotatably attached to a stationary member when the device is being used for a layout. The device utilizes means (33) to fasten the device to the stationary member. The fastening means is beneficial since it allows more accurate layouts to be formed by preventing the device from sliding or moving away from the desired pivot axis as the device is rotated about the pivot axis.

Trevino discloses a tape measure (reel 60) integrally mounted within a housing (housing 12) having means for automatically extending and retracting a tape (tape 16). The device allows a single person to extend and retract a tape while staying in a single location, thereby facilitating

the taking of measurements by a single person (see figure 1A, 2, and 3, column 1, lines 29-46, and column 3, lines 20-46).

Referring to claim 30, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the angle and distance device disclosed by Barker by adding means for fixedly and rotatably attaching the device to the stationary member, as disclosed by Moxey, in order to fasten the device to the stationary member and thereby obtain a more accurate layout. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by mounting the tape measure within a housing having extending means, as disclosed by Trevino, in order to allow a single person to extend and retract the tape while staying in a single central location when taking measurements for a layout.

Referring to claim 32, the particular type of material used to make the stationary member, i.e., a board, absent any criticality, is only considered to be the use of a "preferred" or "optimum" material out of a plurality of well known materials that a person of ordinary skill in the art at the time the invention was made would have been able to provide using routine experimentation based on the intended use of applicant's apparatus, i.e., suitability for the intended use of applicant's apparatus. See *In re Leshin*, 125 USPQ 416 (CCPA 1960), where the court stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious.

Referring to claims 36 and 37, the shape of the stationary member, i.e., circular or semi-circular shaped, absent any criticality, is only considered to be an obvious modification of the shape of the stationary member disclosed by Barker, Moxey, and Trevino as the courts have held

that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention, i.e., to provide a surface on which to mark a layout. See *In re Dailey*, 149 USPQ 47 (CCPA 1976).

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18. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barker, Moxey, and Trevino, as applied to claims 30, 32, 34, and 36-38 above, and further in view of Rauch.

Barker, Moxey, and Trevino disclose a device having all of the limitations of claim 31, as stated above in paragraph 18, except for the carrier having a front leg with guides for the tape.

Rauch discloses a device for measuring distances having a carrier with a front leg (front end area 11c) having guides (guides 20) for a tape (tape 19). The front leg and guides are beneficial since they protect the tape from being damaged as it is retracted back into a tape measure (see figure 1, column 2, lines 10-13, and column 3, lines 33-39).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker, Moxey, and Trevino by adding a front leg with guides to the carrier, as disclosed by Rauch, in order to protect the tape as it is being retracted into the tape measure.

19. Claims 33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker, Moxey, and Trevino, as applied to claims 30, 32, 34, and 36-38 above, and further in view of Martinez.

Barker, Moxey, and Trevino disclose a device having all of the limitations of claims 33 and 35, as stated above in paragraph 16, except for the stationary member having non-slip feet and the stationary member having paper placed on its surface.

Martinez discloses a device for mapping areas having a stationary member with non-slip feet for securing the member to a surface when extending a measuring tape that is attached to the member, and a template being formed by drawing onto paper placed on the stationary member in order to remove the template from the stationary member after a layout is marked. The use of paper allows an individual to utilize the stationary member for drawing many different layouts since the markings are not placed directly on the stationary member (see figure 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker, Moxey, and Trevino by adding non-slip feet and paper to the stationary member, as disclosed by Martinez, in order to prevent the stationary member from moving when the tape is being retracted or extended from the tape measure and allow the stationary member to be utilized for more than a single layout.

30. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barker, Moxey, and Trevino, as applied to claims 30, 32, 34, and 36-38 above, and further in view of Arcand.

Barker, Moxey, and Trevino disclose a device having all of the limitations of claim 39, as stated above in paragraph 16, except for the tape having a pivotal pointer at a distal end.

Arcand discloses a tape measure having a pivotal pointer at a distal end of the tape for securely attaching the distal end onto a surface and allowing a single person to maintain the tape in an extended position when taking measurements.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker, Moxey, and Trevino by adding a pivotal pointer at a distal end of the tape, as disclosed by Arcand, in order to allow a single person to take measurements by securely attaching the distal end onto a surface and thus maintain the tape in an extended position when marking the stationary member.

1
21.

Claims 17, 40, 43, 45, 47, 48, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker.

Barker discloses a layout device having:
a circular stationary member having a flat surface,
an angle and distance device rotatably attached to the stationary member, the angle and distance device having a carrier and a tape measure connected to the carrier,
and a holder (23) attached to an end of the tape and configured for holding a writing utensil (25).

Barker teaches that the device is used for creating a template by providing the stationary member, rotatably attaching the angle and distance device to the stationary member, extending the end of the tape measure of the angle and distance device to a critical feature of an area to be measured, and recording direction and distance information directly on the stationary member relating the direction and distance of the critical feature to the pivoting point of the angle and distance device.

Barker does not disclose the area being the layout of a room, the stationary member being circular or semi-circular, or the stationary member being a board.

Referring to claim 17, Barker teaches that his layout device can be used to create a layout of a surface area having critical features to which the tape is extended to, i.e., any surface area. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the Baker device to create a layout of a room since a room has a surface area and critical features and Barker discloses that his device can be used to layout any surface area.

Referring to claim 43, the particular type of material used to make the stationary member, i.e., a board, absent any criticality, is only considered to be the use of a “preferred” or “optimum” material out of a plurality of well known materials that a person of ordinary skill in the art at the time the invention was made would have been able to provide using routine experimentation based on the intended use of applicant’s apparatus, i.e., suitability for the intended use of applicant’s apparatus. See In re Leshin, 125 USPQ 416 (CCPA 1960) where the court stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious.

Referring to claims 47 and 48, the shape of the stationary member, i.e., circular or semi-circular shaped, absent any criticality, is only considered to be an obvious modification of the shape of the stationary member disclosed by Barker as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention. See In re Dailey, 149 USPQ 47 (CCPA 1976).

Therefore, in utilizing the device disclosed by Barker to measure and lay out a surface area of a room, the method steps of claims 17, 40, 43, 45, 47, 48, and 50 would inherently be followed.

20
21. Claims 18 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of Arcand.

Barker discloses a device having all of the limitations of claims 18 and 52, as stated above in paragraph 20, except for the tape having a pivotal pointer at a distal end.

Arcand discloses a tape measure having a pivotal pointer (pin attachment 100) at a distal end of the tape for securely attaching and aligning the distal end onto a surface thus maintaining the tape in an extended position and allowing a single person to take measurements (see figure 3 and column 3, lines 55-60)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding a pivotal pointer at a distal end of the tape, as disclosed by Arcand, in order to allow a single person to take measurements by securely attaching and aligning the distal end onto a surface and thus maintain the tape in an extended position when marking the stationary member.

Therefore, in utilizing the device disclosed by Barker and Arcand to measure and lay out a surface area of a room, the method steps of claims 18 and 52 would inherently be followed.

22
23. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of Rauch.

Barker discloses a device having all of the limitations of claim 41, as stated above in paragraph ²¹⁹ 20, except for the carrier having a front leg with guides for the tape.

Rauch discloses a device for measuring distances having a carrier with a front leg (front end area 11c) having guides (guides 20) for a tape (tape 19), the guides protecting the tape from being damaged as it is retracted back into a tape measure (see figure 1, column 2, lines 10-13, and column 3, lines 33-39).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding a front leg with guides to the carrier, as disclosed by Rauch, in order to protect the tape as it is being retracted into the tape measure.

Therefore, in utilizing the device disclosed by Barker and Rauch to layout a surface area of a room, the method steps of claim 41 would inherently be followed.

22
24. Claims 44 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of Martinez.

Barker discloses a device having all of the limitations of claims 44 and 46, as stated above in paragraph ²¹⁹ 20, except for the stationary member having non-slip feet, the stationary member having paper placed on its surface for marking thereon.

Martinez discloses a device for mapping areas having a stationary member (12) with non-slip feet (18) for securing the member on a surface when extending a measuring tape (38) that is attached to the member, and a layout formed by drawing onto paper placed on the stationary member in order to remove the layout from the stationary member after the layout is drawn. The

use of a paper allows an individual to utilize the stationary member for drawing many different layouts since the markings are not placed directly on the stationary member (see figure 2).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding non-slip feet and paper to the stationary member, as disclosed by Martinez, in order to prevent the stationary member from moving when the tape is being retracted or extended from the tape measure and allow the stationary member to be utilized for more than a single layout.

Therefore, in utilizing the device disclosed by Barker and Martinez to layout a surface area of a room, the method steps of claims 44 and 46 would inherently be followed.

25. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of Trevino.

Barker discloses a device having all of the limitations of claim 49, as stated above in paragraph 20, except for the device having a tape measure extender for mechanically extending the tape.

Trevino discloses a tape measure having a housing (12) with means for automatically extending and retracting a tape (16). The device allows a single person to extend and retract a tape while staying in a single location, thereby facilitating the taking of measurements by a single person (see figure 1A, 2, and 3, column 1, lines 29-46, and column 3, lines 20-46).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding tape measure-

extending means, as disclosed by Trevino, in order to allow a single person to extend and retract the tape while staying in a single central location when taking measurements for a layout.

Therefore, in utilizing the device disclosed by Barker and Trevino to layout a surface area of a room, the method steps of claim 49 would inherently be followed.

26. Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barker in view of Mercier.

Barker discloses a device having all of the limitations of claim 51, as stated above in paragraph *20*, except for the device having a digital readout for displaying the distance the tape is extended.

Mercier discloses a tape measure having a digital readout (10) for automatically displaying the distance that the tape is extended. The digital readout allows an individual to quickly and accurately determine the distance that the tape measure is extended (see figure 1 and abstract).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Barker by adding a digital readout displaying the distance the tape is extended, as disclosed by Mercier, in order to allow an individual to quickly and accurately determine the distance that the tape measure is extended when taking measurements for a layout.

Allowable Subject Matter

27. Claims 26-29 and 68 are allowed.

Response to Arguments

28. Applicant's arguments with respect to the rejection of claims 2-15, 25, and 54-67 over Barker, claim 16 over Barker in view of Arcand, and claims 30-39 over Barker in view of Trevino, and new claim 69 have been considered but are moot in view of the new ground(s) of rejection

29. Applicant's arguments filed 11/22/02, with respect to claims 17, 18, 25, 40-56, and 58-64 have been fully considered but they are not persuasive.

Applicant argues that the Martinez reference does not anticipate claim 25 because Martinez does not disclose an angle and distance device that is fixedly and rotatably attached to a stationary member. This argument is not persuasive since Martinez discloses in figure 2 and column 2, lines 23-55 a stationary member (12) having an angle and distance device (22, 34, 36) that is fixedly and rotatably attached to the stationary member by a pivot peg (14). Accordingly, applicant's arguments regarding the allowability of claims 54-56 and 58-64 because of their dependence on claim 25 are not persuasive.

Applicant argues that claim 17 is allowable because the Martinez reference does not disclose or suggest recording direction information on a stationary member. Applicant states that Martinez discloses that an "X" may be placed on the stationary member, but that this "X" signifies only distance information and does not signify direction and distance information. Applicant further states that Martinez does not disclose writing angle information on the stationary member as stated in claim 53, wherein the angle information signifies an angle of the

tape measure relative to the stationary member. These arguments are not persuasive since Martinez discloses in figure 1 and column 3, lines 1-19 that the distances of the measured features (x) from the pivot point (14) of the angle and distance device (22, 34, 36) and the angular location of the measured features from the pivot point (14) of the angle and distance device (22, 34, 36) are recorded on the stationary member, wherein the measured features (x) are individual locations along a perimeter of an area being laid out, e.g., individual locations along the perimeter of a golf green. Martinez does not disclose marking the stationary member with an "X". Martinez marks the stationary member according to the distance and angular position (direction) of each of the measured features (x) from the pivot point as the angle and distance device is pivoted around the perimeter of the area, and thereby creates a template of the area. Accordingly, applicant's arguments regarding the allowability of claims 18 and 40-53 because of their dependence on claim 17 are not persuasive.

Applicant argues that claim 17 is allowable because the Barker reference does not disclose or suggest recording direction information on a stationary member. Applicant states that Barker discloses drawing an arc, and that the arc does not signify either angle or distance information. These arguments are not persuasive since Barker discloses in figure 3 and column 2, lines 48-62 that the device is also used for drawing a line, wherein the length of the drawn line defines the distance of the end of the tape from the pivot point of a device holding the tape, and wherein the direction that the line is drawn indicates an angular position with respect to another line. Accordingly, applicant's arguments regarding the allowability of claims 18 and 40-53 because of their dependence on claim 17 are not persuasive.

Conclusion

30. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

31. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 703-305-0930. The examiner can normally be reached on Monday-Thursday 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F Gutierrez can be reached on 703-308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7725 for regular communications and 703-308-7725 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

mj
January 14, 2003


CHRISTOPHER W. FULTON
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